

H.R. 2944
AMENDMENTS TO AMENDMENT IN THE NATURE
OF A SUBSTITUTE
OFFERED BY MR. BROWN OF OHIO

Page 82, strike line 13 and all that follows down through line 2 on page 83 and insert:

1 (a) AGGREGATION.—Part II of the Federal Power
2 Act (16 U.S. C. 824 and following) is amended by adding
3 at the end the following new section:

4 **“SEC. 221. AGGREGATION.**

5 “(a) IN GENERAL.—Subject to not unduly discrimi-
6 natory or preferential State requirements, each retail elec-
7 tric consumer may designate any entity that aggregates
8 consumers, including a political subdivision of a State or
9 a rural electric cooperative, to negotiate on the consumer’s
10 behalf the purchase of retail electric energy on an aggre-
11 gate basis if the group of consumers is served by one or
12 more local distribution companies all of whose local dis-
13 tribution facilities are subject to open access. Nothing in
14 this subsection shall be construed to prohibit the aggrega-
15 tion of electric load by local government units in a dif-
16 ferent manner under other authority of law.

17 “(b) COMMUNITY CHOICE AGGREGATION OF ELEC-
18 TRIC LOAD.—Any State that permits any group of retail
19 electric consumers to choose among competing suppliers

1 of electric energy shall permit any general purpose local
2 government unit for any political subdivision of the State,
3 or group of such general purpose units of local government
4 acting together, to offer to act as an agent for all pur-
5 chasers that are within such group of retail electric con-
6 sumers and that are located within the boundaries of such
7 political subdivision for the purpose of purchasing electric
8 energy on an aggregate basis if such local government, or
9 group of local governments, comply with the requirements
10 of subsection (c).

11 “(c) REQUIREMENTS.—

12 “(1) APPROVAL BY VOTE.—A local government
13 shall be covered by the provisions of subsection (b)
14 only if such government has approved the aggrega-
15 tion of electric energy purchases by a vote of its
16 elected governing body or by a vote of its citizens.
17 Two or more local governments shall be covered by
18 the provisions of subsection (b) only if such govern-
19 ments have approved the aggregation of electric en-
20 ergy purchases by a vote of the elected governing
21 body or by a vote of the citizens of each local gov-
22 ernment.

23 “(2) PARTICIPATION NOT MANDATORY.—A local
24 government shall be covered by the provisions of
25 subsection (b) only if all retail electric consumers

1 permitted to choose among competing suppliers of
2 electric energy that are located within the bound-
3 aries of such political subdivision are offered the op-
4 portunity to participate in the aggregation of pur-
5 chases and any such consumer choosing not to par-
6 ticipate is permitted to opt out and purchase electric
7 energy from another agent acting as an aggregator
8 or directly from any supplier or other person.

9 “(3) STATE REGULATORY AUTHORITIES.—Each
10 State regulatory authority for a State that permits
11 any group of retail electric consumers to choose
12 among competing suppliers of electric energy shall
13 cooperate with local governments for the purpose of
14 compliance with this subsection. Each such State
15 regulatory authority shall establish guidelines for
16 local governments acting as community choice elec-
17 tricity aggregators. No State regulatory authority
18 may interfere with a local government’s existing
19 powers to procure competitive energy services under
20 existing Federal and State law, city charter provi-
21 sions, or local procurement practices.

22 “(4) FUNDS FOR RENEWABLE ENERGY OR EN-
23 ERGY EFFICIENCY.—Each State that permits any
24 group of retail electric consumers to choose among
25 competing suppliers and that also authorizes or

1 mandates the collection of funds for renewable en-
2 ergy or energy efficiency programs shall permit local
3 governments that serve as community choice
4 aggregators of electric energy purchases to collect
5 and expend such funds in the case of consumers
6 within the aggregated jurisdiction if the local gov-
7 ernment has prepared and approved a plan for such
8 collection and expenditure at the local level and
9 State regulators have reviewed and approved said
10 plan as consistent with State energy goals and as
11 providing an appropriate contribution to any state-
12 wide or regional renewable energy or energy effi-
13 ciency fund that benefits the aggregated jurisdiction.

14 “(c) FEDERAL POWER ACT JURISDICTION.—No local
15 government that aggregates electric load as described in
16 subsection (b) shall be considered a utility engaging in the
17 wholesale purchase and resale of electricity for purposes
18 of the Federal Power Act. Providing electricity to aggre-
19 gated customers within the boundaries of a local govern-
20 ment as described in subsection (b) shall not be considered
21 a wholesale transaction subject to the jurisdiction of the
22 Federal Energy Regulatory Commission under the Fed-
23 eral Power Act.

24 “(d) ENFORCEMENT.—The Federal Energy Regu-
25 latory Commission may bring an action in the appropriate

1 United States District Court against any State to require
2 compliance with the provisions of subsection (b).

3 “(e) SAVINGS PROVISION.—Nothing in this section
4 shall be construed to prohibit the aggregation of electric
5 load by local government units in a different manner
6 under other authority of law.

7 “(f) DEFINITIONS.—As used in this section:

8 “(1) The term ‘aggregation’ means the pur-
9 chase or acquisition of retail electricity on behalf of
10 two or more consumers.

11 “(2) The term ‘retail electric consumer’ means
12 any person who purchases or offers to purchase any
13 retail electric supply.

14 “(3) The term ‘State’ means a State, the Dis-
15 trict of Columbia, the Commonwealth of Puerto
16 Rico, the Virgin Islands, Guam, American Samoa,
17 the Commonwealth of the Northern Mariana Is-
18 lands, and Indian tribes as defined in section 102(2)
19 of the Federally Recognized Indian Tribe List Act of
20 1994 (25 U.S.C. 479a(2)).

21 “(4) The term ‘supplier’ means any person who
22 produces, generates, manufactures, aggregates, mar-
23 kets, brokers, sells, or otherwise supplies electric en-
24 ergy.”.

1 (b) FRANCHISES.—Any State that has deregulated
2 retail sales of electricity shall permit local governments to
3 exercise local franchise powers. A local government that
4 has granted a franchise to a utility at a prior time may
5 offer such franchise for competitive bidding and contract
6 award, provided such measures are authorized by con-
7 sumers in a public process.

8 (c) EXCLUSIONS.—

9 (1) UTILITIES NOT PARTICIPATING.—For mu-
10 nicipal electric utilities and rural electric coopera-
11 tives that are not participating in retail electric com-
12 petition, subsection (b) and the amendments made
13 by subsection (a) shall not apply.

14 (2) AGGREGATION.—For States that have
15 adopted retail competition by law or regulation prior
16 to the date of enactment of this Act, subsection (b)
17 and the amendments made by subsection (a) shall
18 not apply to the provisions of a State law or regula-
19 tion, and any subsequent regulation implementing
20 such State law or regulation as such law or regula-
21 tion may pertain to an opt-out aggregation plan as
22 it may be undertaken by any general purpose local
23 government unit for any political subdivision of the
24 State including a municipal corporation, county gov-
25 ernment or township.

1 tively choose a supplier other than the supplier
2 designated by the local government unit.

3 (d) SEPARABILITY.—If any provision of this section
4 (or the application of that provision to particular persons
5 or circumstances) is held invalid, the remainder of this
6 section (or the application of that provision to other per-
7 sons or circumstances) shall not be affected.